

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALICIA NUNNERY, *et al.*, )  
Petitioners, ) CASE NO. C05-1732RSM-MJB  
v. )  
STATE OF WASHINGTON, *et al.*, ) REPORT AND RECOMMENDATION  
Respondents. )

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On October 13, 2005, petitioners Alicia Nunnery and iazQueena Nunnery submitted to this Court for review a document entitled “Declaration And Motion For Habeas Corpus To Stop Interference With My Visitations With My Child” together with a motion for court appointed counsel. Petitioners explain in their pleading that iazQueena Nunnery is the daughter of Alicia Nunnery, and that iazQueena currently resides at the Echo Glen Children’s Center. They further explain that up until September 4, 2005, Alicia Nunnery had visited her daughter at Echo Glen every weekend since her admittance to that facility in March 2005. Alicia Nunnery states that because of fears for her own health and safety, and for the well-being of her daughter, she has chosen not to return to Echo Glen. Petitioners assert that they have “been threatened by the inappropriate, harassing, and retaliatory action of two employees” at Echo Glen and they appear to seek a restraining order enjoining Echo Glen employees from interfering with Alicia Nunnery’s visits which her daughter.

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While petitioners do not state the precise basis for this Court's jurisdiction over their claims, they do indicate in the caption of their pleading that they are seeking relief by way of habeas corpus. A writ of habeas corpus may issue only upon a finding that a prisoner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioners do not seek release from custody by way of the instant action. Thus, habeas corpus is an improper mechanism for obtaining the relief they seek. While this Court does have authority under 42 U.S.C. § 1983 to entertain a civil rights action alleging unconstitutional conduct by state employees, petitioner's have not requested relief under § 1983 nor have they alleged sufficient facts at this juncture to implicate federal constitutional concerns.

For these reasons, this Court recommends that petitioners' request for federal habeas relief be denied and that this action be dismissed with prejudice. This Court further recommends that petitioners' motion for appointment of counsel be stricken as moot. A proposed order accompanies this Report and Recommendation.

Dated this 27th day of October, 2005.

  
MONICA J. BENTON  
United States Magistrate Judge